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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,016	01/14/2004	Yukio Matsumoto	424P077	3286

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EXAMINER

NAFF, DAVID M

ART UNIT PAPER NUMBER

1651

DATE MAILED: 06/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,016

Applicant(s)

MATSUMOTO

Examiner

David M. Naff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/14/05 &amp; 8/20/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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#### DETAILED ACTION

Claims examined on the merits are 1-3, which are all claims in the application.

5 The Japanese documents list on form 1449 of 8/20/04 have been lined through and not considered since translations have not been provided.

The Japanese documents list on form 1449 of 1/14/04 have been considered to the extent their disclosure is provided on page 3 of the specification.

#### 10 *Specification*

The disclosure is objected to because of the following informalities: the abstract is objected to as containing two paragraphs. The abstract should be one paragraph, and not over 150 words.

15 Appropriate correction is required.

#### *Specification*

The disclosure is objected to because of the following informalities: the specification contains numerous misspellings.

Appropriate correction is required.

#### 20 *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

25 The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 1-3 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification fails to describe the adjuvant for accelerating enzyme activity of the invention in sufficient clarity, detail and specificity to enable one to know precise components that form the adjuvant. At the top of page 8, connecting sequences are given. However, it is uncertain as to what E, M and S represent. In paragraph 0022 on page 8 and other places in the specification, formulas of the type  $C_aH_bO_cN_dP_eS_f$  are recited. However, C, H, O, N, P and S, and a, b, c, d, e and f are not defined. Such formulas are meaningless. No adjuvant having specific components has been described. The specification (page 11) sets forth that the adjuvant resembles amniotic liquid, and contains proteins, a bioinorganic compound and an electrolyte. However, the specification fails to describe specific proteins, bioinorganic compounds and electrolytes that make the adjuvant resemble amniotic fluid.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C.

112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5       The claims are confusing and unclear as to components that form the adjuvant by the claims being vague, and generalizing as to components present. The formula in line 5 of claim 1 is uncertain as to components present. When a-f can be any numbers, there is no purpose in having a-f present in the formula, and it is unclear as to  
10       materials the formula encompasses. It is uncertain as to inorganic substances can have a formula as claimed. Additionally, the claims contain misspellings such as "accelating", "catalizer", "bioresidues" and "nd", which further confuse the invention claimed.

***Claim Rejections - 35 USC § 102***

15       The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

20       (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Merritt et al (3,325,364).

25       The claims are drawn to an adjuvant for accelerating enzyme activity including amino acids, metal cations and organic compounds.

Merritt et al disclose a stabilizing enzyme composition containing a metal cation such as calcium (col 2, line 31), a protein

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or hydrolyzed protein (col 2, lines 40-49) and a vasoconstrictor amine (col 2, lines 50-57).

The composition disclosed by Merritt et al is the same as presently claimed adjuvant. Since the composition stabilized an enzyme, it will inherently accelerate activity of the enzyme. The partially hydrolyzed protein will contain amino acids. The proteins disclosed by Merritt et al are biomass material as required by claim 2, and can also be considered a bioresidue as in claim 3. A protein such as casein disclosed by Merritt et al will inherently contain C, H, O, N, P and S required by the formula.

#### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is 571-272-0920. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David M. Naff  
Primary Examiner  
Art Unit 1651

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DMN  
6/26/06